IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 5223 of 2001 (M/S)
(Old No. 19184 of 1997)

1. Suresh Chandra Gupta
   S/o Shri Munna Lal Gupta
   Sanitary Inspector,
   Nagar Palika, Bareilly.

2. Umesh Chandra Gupta
   S/o Shri Munna Lal Gupta
   R/o Ramleela Mohalla, Haldwani,
   District Nainital.

3. Praveen Kumar Gupta
   S/o Shri Munna Lal Gupta
   R/o 6-D, Murli Nagar,
   Lucknow.

4. Vijay Kumar Gupta
   S/o Shri Munna Lal Gupta
   R/o Ramleela Mohalla, Haldwani,
   District Nainital.

5. Ajay Kumar Gupta
   S/o Shri Munna Lal Gupta
   R/o 6-D, Murli Nagar,
   Lucknow,

6. Akhilesh Kumar Gupta
   S/o Shri Munna Lal Gupta
   R/o Ramleela Mohalla, Haldwani,
   District Nainital.

7. Pradeep Kumar Gupta
   S/o Shri Munna Lal Gupta
   R/o Ramleela Mohalla, Haldwani,
   District Nainital.

8. Sanjay Kumar Gupta
   S/o Shri Munna Lal Gupta
   R/o 6-D, Murli Nagar,
   Lucknow.

……. Petitioners

Versus

1. Special Judge, Nainital
   District Nainital.

2. Prescribed Authority (Munsif)
   Haldwani, Nainital.

3. Dr. Pritpal Singh S/o Not Know
Shop: Railway Bazar, Haldwani,
Tehsil Haldwani, District Nainital.

…… Respondents

Mr. Alok Singh, Senior Advocate assisted by
Mr. Lalit Belwal, Advocate for the petitioners.
None appeared for the respondent No. 3.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner (landlord) has sought writ in the nature of certiorari quashing the judgment and order dated 13.05.1997 passed by learned Additional District Judge / Special Judge, Nainital, whereby he has allowed the rent control appeal No. 13 of 1995 and rejected the application for release of the accommodation in question moved under Section 21(1)(a) of the U.P. Act No. 13 of 1972.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioners are owners / landlords of the shop in question situated in the Railway Bazar, Haldwani, District Nainital. An application for release of said shop was moved by the petitioner under Section 21(1)(a) of the U.P. Act No. 13 of 1972 before the prescribed authority, District Nainital which was registered as rent control case No. 12 of 1991. In said application, the petitioners alleged that petitioner No. 1, Suresh Chandra Gupta since suffering from heart ailment desires to seek retirement from his service and wants to establish his business in the shop in question. Apart from this, it was stated in the application that Sri Amit Kumar son of petitioner No. 1 is unemployed and he is also required to

be established and for that purpose the shop in question is needed. It is further stated in the said application that Sri Amit Kumar has done a course relating to photography and petitioner No. 1 wants to settle him in that business. Respondent No. 3, Dr. Pritpal Singh is the tenant of the petitioners who is running his clinic in the ship in question. However, it was admitted in the petition itself that the petitioner Nos. 6, 7 and 8 were doing their business in different shops which they have taken on rent. However, petitioner No. 5 is also an unemployed youth who is doing his business depending on the mercy of petitioner No. 8, who has his shop in Lucknow. Claiming the need of the petitioner No. 1 and his son to be genuine and bonafide and also greater hardship in their favour, the release of the shop was sought by the petitioners. The respondent No. 3 (tenant) contested said application and moved his written statement denying the need of the landlords. It was further stated that all the brothers of petitioner No. 1 are settled in different business. It was also pleaded by the respondent No. 3 in his written statement that he is running his clinic in the shop in question for more than 40 years and, as such, has earned goodwill. Claiming his hardship to be more than that of the petitioners, the respondent No. 3 pleaded that the application for release is not maintainable. Learned prescribed authority after considering the evidence of the parties and hearing them, on 06.04.1995, allowed the release application holding that the need of the petitioner No. 1 and his son is genuine and bonafide and also that there is greater hardship in their favour as against the respondent No. 3. Aggrieved by said order, the respondent No. 3 preferred an appeal under Section 22 of the U.P. Act No. 13 of 1972 which was

registered as rent control appeal No. 13 of 1995. Learned appellate court after hearing the parties, allowed the appeal and rejected the application for release of the shop. The said order of the appellate authority has been challenged in this writ petition on the ground that the appellate authority (respondent No. 1) has erred in law in holding that the need of the son of the petitioner No. 1 is not bonafide. The impugned order is also challenged on the ground that the findings of the learned appellate court are perverse and also against the proviso contained in Rule 16(2)(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. Lastly, it is also alleged in the writ petition that the finding as to that no alternative accommodation was available to the respondent No. 3 is against the evidence of record.

3) This writ petition was initially filed before the Allahabad High Court in the year 1997 from where notices were issued to the respondent No. 3 by registered post as well as by ordinary course, but the respondent did not contest the petition there. Meanwhile, under Section 35 of the U.P. Re-organization Act, 2000, this writ petition was transferred to this Court, for its disposal. Again, notices were issued to the respondent No. 3 by registered post as well as by ordinary course, from this Court, but still respondent No. 3, for the reasons best known to him, did not prefer to contest the writ petition. As such, there is no counter affidavit filed on his behalf.

4) I heard learned counsel for the petitioners and perused the record.

5) In an application moved under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, the petitioner / landlord is required to show bonafide need for occupation of the accommodation by himself or by any member of his family and also required to show that he has greater hardship as against the tenant, if evicted. Learned prescribed authority in its judgment dated 06.04.1995, after discussing the evidence on record found that the need of the landlord is genuine and bonafide and also that there is greater hardship to him as against the tenant, if the release application is not allowed. Learned appellate court (respondent No. 1) reversing said judgment and order of the prescribed authority mainly on the ground that out of the eight petitioners almost all were having either service or some rented shop for their business. The learned appellate court clearly erred in law in ignoring the fact that petitioner No. 1 has sought release of the shop in question not only for the business he wants to establish for himself after retirement, but also for his unemployed son. Learned appellate court has not given any reason to reverse the finding of the prescribed authority regarding the need of the petitioner's unemployed son to establish his business. Petitioners inter se are brothers. Petitioner No. 1 has a right to seek release of the shop which he needed for members of his family. The appellate court appears to have been swayed by the fact that the petitioners are eight in number and are settled in their respective jobs / business. It was not the case of the petitioners that all the brothers needed shop to run their business but it was only the petitioner No. 1 and his son who needed the shop in question. In the circumstances, the

finding of the learned appellate court is perverse and it is against the evidence on record. As to the comparative hardship in the last para of the impugned judgment, it is mentioned that since there is no bonafide need found claimed by the petitioners, the availability of alternative accommodation to the tenant need not to be considered. No doubt, if the landlord fails to establish bonafide need there is no question of examining the comparative hardship, but in the present case, since the finding of the appellate court on the bonafide need of the landlord is perverse, as such, the finding recorded by the prescribed authority as to the comparative hardship deserves to be examined. This Court after going through the evidence on record and the judgment of the prescribed authority found that there is no illegality or perversity in the findings of the prescribed authority. As such, this Court is of the view that the learned appellate court has committed manifest error of law in reversing the judgment and order passed by the prescribed authority.

7) In view of the above discussion, the writ petition deserves to be allowed. Accordingly, the writ petition is allowed. The judgment and order dated 13.05.1997 passed in rent control appeal No. 13 of 1995 by respondent No. 1 is quashed and the judgment and order dated 06.04.1995 is upheld. However, in the interest of justice, the respondent No. 3 is allowed one month time from today to vacate the premises in question. No order as to costs.

(Prafulla C. Pant, J.)

Dt. 23rd September, 2005
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Hon'ble P.C. Pant, J.

(Recall Appl. No. 4958/06)
(Recall Appl. No. 4959/06)
(Recall Appl. No. 4960/06)

There is none to press the recall Application No. 4958 of 2006, No. 4959 of 2006 and No. 4960 of 2006.

All the three applications are dismissed in default of the applicants.

The writ petition has already been decided on 23-09-2005.

Consign the record to the record room.

Sd/-

Dt. 22-08-2006

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